

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CALLAWAY GOLF COMPANY,

Plaintiff,

v.

ACUSHNET COMPANY,

Defendant.

C. A. No. 06-91 (SLR)

**CALLAWAY GOLF'S *OPPOSITION*
TO ACUSHNET'S MOTION TO AMEND THE JUDGMENT
PURSUANT TO FED. R. CIV. P. 59(e)**

The parties agree that this case concerns all 9 claims identified in Acushnet's motion; the parties disagree on what decision should be rendered regarding those claims. As set forth in Callaway Golf's memorandum in support of its motion for post-trial relief (D.I. 619), Acushnet capitalized on a number of erroneous evidentiary rulings in order to skew the results of the most recent jury trial in its favor. Because the findings on anticipation and obviousness were against the great weight of the evidence, and because of the prejudicial impact of the evidentiary errors, Callaway Golf respectfully believes that a new trial is warranted. Indeed, the anticipation and obviousness decisions are so erroneous that judgment as a matter of law would also be appropriate. Callaway Golf respectfully believes that no additional invalidity judgment should be entered, and that the existing judgment should be either vacated or reversed. Nevertheless, Callaway Golf agrees with Acushnet that, whatever ultimate decision the Court may enter, it should be entered on all 9 claims identified in Acushnet's motion, namely: claims 1, 4 and 5 of

the '293 patent, claims 1-3 of the '156 patent, claim 5 of the '130 patent, and claims 1 and 3 of the '873 patent.

Dated: June 1, 2010

FISH & RICHARDSON P.C.

By: */s/ Thomas L. Halkowski*

Thomas L. Halkowski (#4099)
222 Delaware Avenue, 17th Floor
P.O. Box 1114
Wilmington, DE 19899-1114
Tel: (302) 652-5070
Fax: (302) 652-0607

Frank E. Scherkenbach
225 Franklin Street
Boston, MA 02110-2804
Tel: (617) 542-5070
Fax: (617) 542-8906

Roger A. Denning
12390 El Camino Real
San Diego, CA 92130
Tel: (858) 678-5070
Fax: (858) 678-5099

**ATTORNEYS FOR PLAINTIFF
CALLAWAY GOLF COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2010, I electronically filed with the Clerk of Court
CALLAWAY GOLF'S *OPPOSITION* TO ACUSHNET'S MOTION TO AMEND THE
JUDGMENT PURSUANT TO FED. R. CIV. P. 59(e) using CM/ECF which will send electronic
notification of such filing(s) to the following Delaware counsel. In addition, the filing will also
be sent via hand delivery to local counsel:

Richard L. Horwitz
David E. Moore
Potter Anderson & Corroon LLP
1313 North Market Street, 6th Floor
Hercules Plaza, 6th Floor
P.O. Box 951
Wilmington, DE 19899-0951

Attorneys for Defendant
ACUSHNET COMPANY

Henry Bunsow
Joseph P. Lavelle
Brian A. Rosenthal
Howrey LLP - DC
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004

Attorneys for Defendant
ACUSHNET COMPANY

/s/ Thomas L. Halkowski

Thomas L. Halkowski